

Virender Kumar vs P.S. Rana And Anr. on 17 May, 2007

Himachal Pradesh High Court

Virender Kumar vs P.S. Rana And Anr. on 17/5/2007

JUDGMENT

Deepak Gupta, J.

1. The short question which arises for decision in the present case is whether the State Information Commission to be constituted under the Right to Information Act, 2005, (hereinafter referred to as the Act) can be a single member body or must be a multi member body.

2. The petitioner has filed this writ petition alleging that the State of Himachal Pradesh has only appointed the Chief Information, Commissioner and has not appointed any State Information Commissioner(s) and, therefore, the constitution of the State Information Commission is illegal and not in accordance with Section 15(2) of the Act, which reads as follows.-

15(1) xxxxxxxx

(2) The State Information Commission shall consist of-

(a) the State Chief Information Commissioner; and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

3. The contention of the petitioner is that the State Information Commission must consist of a Chief Information Commissioner and at least one State Information Commissioner. On the other hand, the contention of the respondents as put forth by Mr. R.S. Cheema, learned Senior Advocate, appearing for the State of Himachal Pradesh is that it is not incumbent upon the State to appoint a State Information Commissioner. According to him the words "as may be deemed necessary" in Clause (b) of Sub-section (2) of Section 15 vest discretion in the Government to appoint any number of State Information Commissioner up to a maximum of 10. It is contended that the State can, therefore, decide not to appoint any State Information Commissioner also.

4. On behalf of the respondents it is also contended that there is no justification for the appointment of any State Information Commissioner since the pending work in the State is very low and the appointment of another person would lead to unnecessary expense and wastage of public money.

5. As far as this contention is concerned, we cannot accept the stand of the respondents. Mr. Cheema has taken us through the provisions of the Act and the rules according to which the State has to provide certain facilities and staff to the State Information Commissioners. We are of the considered view that if under the provisions of the Act it

is the mandate of Parliament that the State Information Commission should be a multi member body then the State cannot be allowed to plead that it be permitted to have a single member Commission on the ground that the work is less or that it would lead to unnecessary expenses.

6. Mr. R.S. Cheema, learned Senior Advocate appearing for the respondents, has also drawn our attention to Section 23 and has submitted that in the absence of clear demarcation of the powers of the State Chief Information Commissioner and the State Information Commissioners, no Information Commissioners can be appointed. We are not in agreement with this submission. It is for the State to lay down the procedure which can be in the form of regulations and, therefore, when the State appoints another State Information Commissioner, it can also lay down the manner in which power shall be exercised by this officer.

7. The only question which remains to be answered is the construction and meaning to be given to Section 15(2) of the Act. It would be pertinent to note that the legislature in its wisdom has divided Sub-section (2) into two clauses. Between the two clauses the conjunction "and" has been used. On a bare reading of the Act, it appears that the State Information Commission shall consist of the State Chief Information Commissioner and some State Information Commissioners. The maximum number of State Information Commissioners to be appointed is 10.

8. It is a cardinal principle of law of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses if they can have a proper application in circumstances conceivable within the contemplation of the statute.

9. The present case is to be decided keeping in mind the aforesaid principles.

10. Learned Senior Counsel for respondent No. 2 has referred to Article 324 of the Constitution of India and has also cited certain judgments with a view to support his view that the discretion given in Clause (b) of Section 50(2)(sic 15 (2)) to the State means that it is for the State to decide whether to appoint any State Information Commissioner or not.

11. It would be relevant to refer to Article 324 of the Constitution of India under which the Election Commission of India is constituted, relevant portion of which reads as follows:

324. Superintendence, direction and control of elections to be vested in an Election Commission. - (1) The superintendence,

direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) - (6) xxxxxx

12. The use of words "if any" used in Article 324 (2) after the phrase "such number of other Election Commissioners" clearly shows that the intention of the Parliament was that the Election Commission may be a single member body or a multi-member body. If the language of Article 324(2) of the Constitution of India is compared with the language of Section 15(2) of the Act, it is apparent from the reading of the Act that as far as the State Information Commission is concerned, it has to consist of the Chief Election Commissioner and at least one other member.

13. The question whether a body like the Election Commission of India should be a multi-member body or there should only be one Chief Election Commissioner has been a subject-matter of controversy. In *S.S. Dhanoa v. Union of India and Ors.*, the Apex Court in Para 21 held as follows:

21. In the first instance, the petitioner and the other Election Commissioners were appointed when the work of the Commission did not warrant their appointment. The reason given by Respondent 1 (Union of India), that on account of the Constitution (61st Amendment) Act reducing the voting age and the Constitution (64th Amendment) and (65th Amendment) Bills relating to election to the Panchayats and Nagar Palikas, the work of the Commission was expected to increase and, therefore, there was need for more Election Commissioners, cuts no ice. As has been pointed out by Respondent 2, the work relating to revision of electoral rolls on account of the reduction of voting age was completed in all the States except Assam by the end of July, 1989 itself, and at the Conference of the Chief Electoral Officers at Tirupati, Respondent 2 had declared that the entire preparatory work relating to the conduct of the then ensuing general elections to the Lok Sabha would be completed by August in the whole of the country except Assam. Further, the Constitution (64th and 65th Amendment) Bills had already fallen in Parliament, before the appointments. In fact, what was needed was more secretarial staff for which the Commission was pressing, and not more Election Commissioners. What instead was done was to appoint the petitioner and the other Election Commissioner on October 16, 1989. Admittedly, further the views of the Chief Election Commissioner were not ascertained before making the said appointments. In fact, he was presented with them for the first time in the afternoon of the same day, i.e. October 16, 1989.

14. In *T.N. Seshan, Chief Election Commissioner of India v. Union of*

India and Ors. , a Constitution Bench of Apex Court was dealing with the scheme of Article 324 of the Constitution of India. Certain observations made in S.S. Dhanoa's case supra were held to be incorrect. The Apex Court in Para 13 made certain pertinent observations in relation to the Election Commission of India, which, in our opinion, are also relevant to an independent body like the State Information Commission.

14. xxxxx. We cannot overlook the fact that when the Constitution-makers provided for a multi-member Election Commission they were not oblivious of the fact that there may not be agreement on all points, but they must have expected such high-ranking functionaries to resolve their differences in a dignified manner. It is the constitutional duty of all those who are required to carry out certain constitutional functions to ensure the smooth functioning of the machinery without the clash of egos.

15. The way Section 15(2) of the Act has been worded leaves us in no manner of doubt that the legislature intended and the Act provides that the State information Commission should be a multi-Member Body consisting of one State Chief Information Commissioner and at least one State Information Commissioner. In case the intention of the State was otherwise, the section could have been worded in a different manner altogether. No doubt, the State has been given the discretion to appoint as many State Information Commissioners as it deem necessary, but this number cannot be less than one and cannot exceed ten. We are unable to accept the contention of the respondents that the State has the discretion not to appoint any State Information Commissioners. Such an interpretation would militate against the language of Section 15(2) which, in our opinion, clearly shows that the State Information Commission is to be a multi-Member Body.

16. The petitioner has also prayed that respondent No. 1, i.e. the Chief State Information Commissioner should not act as State Information Commission and should not be held entitled to his salary and allowances until the State Information Commission is constituted by respondent No. 2 in accordance with law. In our opinion this prayer cannot be granted. We cannot set at nought the actions which have already been taken by the Chief State Information Commissioner. This may lead to a State of chaos. We are also of the view that the Chief State Information Commissioner cannot be penalized because the State has not performed its mandatory functions. We can, however, make adequate safeguards to ensure that a properly constituted Commission is constituted in the near future.

17. We, therefore, allow this Writ petition and direct the respondent No. 2 State of Himachal Pradesh to appoint at least one State Information Commissioner in accordance with Section 15(2)(b) of the Right to Information Act, 2005. This be positively done within 8 weeks from today. In case the State fails to appoint a State Information Commissioner in terms of this order in the time so stipulated, the State Information Commission being an improperly constituted body shall cease to exist or function and all consequences shall follow.

18. The writ petition is disposed of in the aforesaid terms. No order as to costs.